

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

77-7026

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-7026

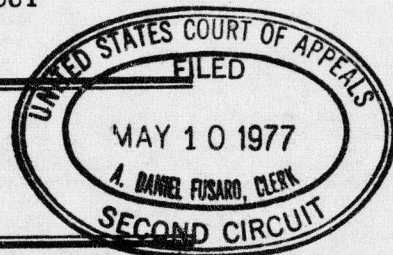
INTER-REGIONAL FINANCIAL GROUP, INC.,
Plaintiff-Appellee,

—v.—

CYRUS HASHEMI,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPELLANT'S REPLY BRIEF



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Norwalk, Connecticut, 06852.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 77-7026

INTER-REGIONAL FINANCIAL GROUP, INC.,

Plaintiff-Appellee

v.

CYRUS HASHEMI,

Defendant-Appellant

APPELLANT'S REPLY BRIEF

INTRODUCTION

The defendant-appellant has previously filed an extensive Brief which discusses the issues raised on appeal. The following is in response to the plaintiff-appellee's Brief concerning matters which are not covered by the initial Brief.

ARGUMENT

A. The Question of Compliance with the District Court Order is Not an Issue on Appeal.

The plaintiff argues extensively in its Brief concerning the question of compliance with the District Court Order.

The defendant, quite naturally, has been reluctant to bring securities into the United States which have never been located here.¹ However, it is respectfully submitted that the question of compliance is solely one for Judge Newman, who has been kept fully informed of the steps which the defendant has taken in order to comply. As noted in his Ruling on the Motion for Reargument, although there has not been full compliance, Judge Newman is apparently satisfied with the defendant's efforts to comply.² (Supp.App. p.33b). Moreover, both Judge Newman and counsel for the plaintiff have been fully

1 The defendant testified before Judge Newman on February 23, 1977, that his securities have never been located in the United States. (Addendum to Brief, pp.7A-10A). Although the cross examination is not reproduced in the Addendum, the defendant testified fully concerning all assets which might be classified as securities. (TR, Feb. 23, 1977, pp.57-74). There has been no attempt to transfer assets out of the United States or to conceal assets abroad, as implied in the plaintiff's brief.

2 Reference should be made to Judge Newman's Order on February 23, 1977 (Supp.App. p.27b) and to Judge Newman's Ruling on the Motion for Reargument (Supp.App. pp.31b,33b, fn.1). It should be noted that Judge Newman stated that he would not act on the Motion for Reargument until the defendant took steps toward compliance. In his Ruling, Judge Newman notes that "while full compliance has not yet occurred, a ruling on the motion for reargument is now appropriate." (App. p.33b).

advised of the steps being taken to comply with the Court Order. (See Correspondence in the Addendum to this Brief, ³ pp.1A-6A).

In particular, counsel for the plaintiff points out that the undersigned indicated that fifteen days would be needed before compliance could be effected. This was counsel's best information at the time. However, when the defendant corresponded with the company in Tehran, Iran, which holds the securities in its possession, it became clear that the fifteen-day estimate of counsel could not be met. Counsel for the plaintiff and Judge Newman have been fully advised as to the developments, and there was discussion between counsel for both parties concerning the nature of the compliance, so as to avoid a financial loss to the defendant by transferring the securities to the United States. (Addendum to Brief, p. 6A). Moreover, the defendant expects to be in full compliance with Judge Newman's Order by the time this case is reached for oral argument before this Court.

Aside from the above, the question of compliance is totally irrelevant to any of the legal issues raised. There is no issue on appeal arising out of the question of compliance

3 Subsequent to the date of the filing of the Brief for the Appellant, the plaintiff filed its Brief, and a Supplemental Appendix. While the defendant does not have any objection to many of the items included, and considers the issue of compliance irrelevant before this Court, some of the materials included are misleading. In order to have this Court fully informed, there is an Addendum to this Brief setting forth copies of the correspondence concerning compliance, and a portion of the Transcript.

with the District Court's Order. The appeal is based on the defendant's belief that the Order in the initial instance is invalid and not authorized by law. This is the sole issue which should be heard on appeal. Attempts by the plaintiff to turn the argument to the question of compliance are merely attempts to cloud the real legal issue presented to this Court. For reasons set forth in the original appeal papers, including the prior Brief, the District Court does not have any authority to issue the Mandatory Injunction Order. As stated by Judge Newman in his Ruling on the Motion for Re-argument, there is, at best, a conflict in the applicable authorities, and he further points out:

The defendant raises serious questions going to the power of the Court to issue such an order. These questions deserve authoritative resolution.^{2/} (Supp.App. p.32b).

* * * * *

^{2/} While this Court felt obliged to follow Fleming as the law of this District, were the question open, I would have questioned whether the Uniform Commercial Code provision relied on in Fleming, Conn. Gen. Stat. § 42a-8-317(2), was dispositive. That provision clearly permits a court with in personam jurisdiction over a defendant to require that defendant to bring his securities into the jurisdiction when the lawsuit seeks to determine ownership of the shares and perhaps other interests in the shares as well. But it is far less certain whether that provision authorizes a prejudgment remedy to bring shares into the jurisdiction solely to secure a judgment yet to be entered in a suit unrelated to determining stock interests. (Supp.App. p.33b).

In view of the above, we see that there are substantial issues of law presented to this Court which have nothing to do with the question of compliance.

B. The Cases Cited by the Plaintiff Do Not Support the District Court's Order.

A number of the cases cited by the plaintiff in its Brief are already thoroughly discussed in the original Brief filed by the defendant, including Fleming v. Grey Manufacturing Co., 352 F.Supp. 724 (D Conn 1973). For the reasons set forth in the original Brief, it is respectfully submitted that the Fleming case is not applicable.

In addition, other cases relied upon by the plaintiff are similarly not applicable. For example, there is a quotation from Smith v. Gilbert, 71 Conn 149, 154, 41 A 284 (1898). Despite the language quoted, the Court concluded that the interest of the defendant in an estate pending the settlement of the Testator's estate and during the lifetime of a life tenant, was a contingent interest and not attachable. Moreover, the facts of the case are irrelevant to the issue of attachment of stock or securities. Secondly, White v. Leary, 6 Conn. Supp. 37 (1938), does not support the plaintiff's position. Although White v. Leary was decided by a single judge of the Superior Court, it was consistent with the then existing law in Connecticut. However, the attachment order which was issued in White v. Leary concerned attachments and injunctions with regard to stock in Connecticut corporations. This is clearly authorized under Section 52-289 of the Connecticut General Statutes. It does not follow from the Leary decision that

attachments of stock in non-Connecticut corporations, which stock is physically located outside of the State of Connecticut, can be reached by attachment or an injunction.

The final Connecticut case relied upon by the plaintiff is Mead v. New York Housatonic and Northern Railroad Co., 45 Conn 199 (1877). This was an action for the foreclosure of a mortgage on land which was located partly in the State of Connecticut and partly in the State of New York. Although the Court conceded that New York may also have jurisdiction, it held that this fact alone did not deprive Connecticut courts of jurisdiction, because it affected real property located in this state. Thus, this case is also not applicable to the factual questions here.

The plaintiff cites the case of Clark Equipment Co. v. Armstrong Equipment Co., 431 F.2d 54 (5th Cir 1970), Reh. Den. 434 F.2d 139, cert.den. 402 U.S. 909 (1971). While this was an order in the nature of a detinue reaching property in five states, the order was based upon a pre-existing, valid, written security agreement which put a lien upon leased equipment. The specific security agreement reserved certain rights in that equipment. Consequently, the Court was only enforcing the pre-existing security agreement, and was not permitting a creditor to reach assets outside of the state by an order in the nature of an attachment or an injunction. Finally, reliance upon United States v. First National City Bank, 379 U.S. 378, 380, 384 (1965) and United States v. First National City Bank,

396 F.2d 897, 900-901 (2nd Cir 1968) is misplaced. In the first case cited, there was a jeopardy assessment under the Internal Revenue Code, and there are specific federal statutes which permit the exercise of extra-territorial jurisdiction in this instance. The second case was an action to enforce a grand jury subpoena issued to the defendant to produce certain documents as part of an investigation of anti-trust law violations. Once again, we have an Act of Congress which permits the exercise of jurisdiction on an extra-territorial basis, in criminal proceedings.⁴

It is clear that the cases relied upon by the plaintiff do not support the Order issued by the District Court. Other cases which the plaintiff cites have already been thoroughly discussed in the original Brief. However, there is one further comment which should be made with regard to the case of Nederlandsche Handel-Maat-Schappij, N.V. v. Sentry Corporation, 163 F.Supp. 800 (ED Pa 1958). This is the only case which is directly on point. A review of the Pennsylvania statutes as set forth in the opinion shows that the Pennsylvania statutes in question are virtually identical to the Connecticut statutes. The Uniform Commercial Code provisions in Pennsylvania are exactly the same as the Connecticut Statutes. There is no distinguishing feature between the two

4 As pointed out in the appellant's Brief, at Page 19, this power is one which has been narrowly applied and certainly is not applicable to a private action, not involving a governmental agency enforcing the criminal laws of the United States. C.F.: Leasco Data Processing Equipment Co. v. Maxwell, 486 F.2d 1326 (2nd Cir 1972); and Airline Stewards and Stewardesses Association v. TWA, 273 F.2d 69 (2nd Cir 1959), cert.den. 362 U.S. 9889 (1960).

cases. As pointed out by the District Court in Pennsylvania, the only basis for a writ of foreign attachment is the presence of the property within the jurisdiction of the court. The Connecticut law is exactly the same.

The mere fact that the Court has in personam jurisdiction is not significant. If the Court did not have in personam jurisdiction, there would be no opportunity to raise this issue before the Court. In this instance, in personam jurisdiction is obtained by personal or abode service on the defendant. The attachment is merely security for any in personam judgment that may be rendered. Meyers v. CIT Corporation, 132 Conn 284, 287, 43 A.2d 742 (1945). While in personam jurisdiction may be acquired by a validly recognized method of substituted service, ordinarily this is not accompanied by an attachment.⁵ If an action is brought to enforce a previously acquired interest in real property, such as the foreclosure of a lien or mortgage, the action is an in rem action, regardless of the method of service of process on the defendant. Mendrochowicz v. Wolfe, 139 Conn 506, 519, 92 A.2d 290 (1953). The only other type of jurisdiction is quasi in rem jurisdiction, which requires not only compliance with the attachment statutes, but seizure of the property, since that forms the basis for the court's jurisdiction over a non-resident defendant. Moreover,

5 For example, substituted service upon the Commissioner of Motor Vehicles, under the non-resident motor vehicle statute, would confer in personam jurisdiction. However, acquisition of jurisdiction by attachment of property in this state and subsequent notice does not confer in personam jurisdiction. (Stephenson, Op. Cit., Section 42e, pp. 168-169).

even for a resident defendant, the action based upon the attachment is an action in which the plaintiff seeks to satisfy a money demand out of the defendant's property. Atlas Garage and Custom Builders, Inc. v. Hurley, 167 Conn 248, 252, 355 A.2d 286 (1974). Consequently, it is clear that the only way in which the issue presented in this case can arise is if there is in personam jurisdiction over the defendant. Otherwise, the jurisdiction is quasi in rem, based upon a valid attachment and seizure of property. It does not apply when the action is in rem because of the nature of an action seeking to enforce a previously acquired interest in real property located in this state. Atlas Garage and Custom Builders, Inc. v. Hurley, supra; see 1 Stephenson, Conn. Civil Procedure, Section 44, pp. 175-176.

Although the Atlas Garage case involved a question of priority between the plaintiff and the defendant, the case is instructive in this situation. The defendant in the Atlas case, in an action for divorce, attached her husband's property, and subsequently recovered a judgment awarding her title to the property. Between the date of her attachment and the divorce judgment, the plaintiff attached the husband's interest in the real estate, and subsequently filed a judgment lien. The Court held that the title was vested in the defendant on the date of the divorce judgment, and did not relate back to the date of her attachment. Consequently, the plaintiff's subsequent attachment and judgment lien had priority. The case demonstrates the strict construction of the attachment statutes in Connecticut. In particular, the Court stated:

Insofar as the statutes prescribe the causes for which attachment may issue, they are strictly construed; the courts have no right under the guise of liberal construction to read into an attachment statute any meaning which its words, construed according to the statutory rules, do not convey. (citation omitted). Where the statute so provides, a remedy by attachment is limited to actions to recover a sum of money only, and in such a case it cannot be employed as a means of recovering specific property. (167 Conn at 257-258).

The question is not the jurisdiction of the Court over the person, but rather its authority to issue an order directing a defendant over which it has in personam jurisdiction to bring securities which have never been located within the jurisdiction here for the sole purpose of the levy of an attachment order. This, it is respectfully submitted, exceeds the authority and jurisdiction of the Court.

C. Recent Connecticut Decisions.

In view of the unique nature of the instant proceeding, and the fact that the prejudgment remedy statute as it exists in Connecticut is relatively new, it is important for the Court to consider all of the decisions of the Connecticut Supreme Court interpreting the statute. Prior decisions which clearly hold that there is a right of appeal from this type of order under Connecticut law are cited in the initial Brief of the defendant. However, since filing that Brief, another decision of the Connecticut Supreme Court has been rendered in the case of Ledgebrook Condominium Association, Inc. v. The Lusk Corporation, 38 Conn. L. J., No. 29, Page 3 (March 29, 1977).

While the case is not directly applicable, there are several points of the decision which should be noted. In that case, a Superior Court Judge, after hearing, granted a prejudgment remedy order of attachment on real property located in Connecticut. An interlocutory appeal was taken from the prejudgment remedy order, as authorized by Connecticut statute, Section 52-278 1.⁶

For the first time, the question of the proof required to support a prejudgment remedy application was discussed. Although the factual discussion of the Court is not appropriate, it is important to note that once again the Connecticut Court pointed out the requirement of strict compliance with the statute:

The remedy of attaching and securing a defendant's property to satisfy a judgment which the plaintiff may recover is unknown to the common law, and is founded on and regulated by our statutory law. (citations omitted). It follows that a party seeking an attachment must comply with the requirements of the statutes allowing such attachments as may be sought. (Supra at 5).

The Court went on to discuss the constitutional requirements of a due process hearing, but recognized the difficulty of applying a standard based on "probable cause", and

⁶ Reference should be made to Page 31 of the appellant's Brief, which discusses this appellate procedure in detail. It is also interesting to note that counsel for the plaintiff in this case represented the appealing defendant in the Ledgebrook case, and took full advantage of appellate rights, which rights he asserts in this case cannot be utilized by the defendant because a federal forum was selected by the plaintiff rather than a state forum

the difficulties associated with the granting of a summary decision, without a full opportunity for a trial on the merits:

Proof of probable cause as a condition of obtaining a prejudgment remedy is not as demanding as proof by a fair preponderance of the evidence. "The legal idea of probable cause is a bona fide belief in the existence of facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it." Wall v. Toomey, 52 Conn. 35,36; see 6 Am.Jur.2d, Attachment and Garnishment, §599. In criminal proceedings, probable cause has been defined as "the knowledge of facts sufficient to justify a reasonable man in the belief that he has reasonable grounds for prosecuting an action." Paranto v. Ball, 132 Conn. 568, 571, 46 A.2d 6; McGann v. Allen, 105 Conn. 177, 186, 132 A.810; see State v. Wilson, 153 Conn. 39, 41, 42, 212 A.2d 75.

Prejudgment attachment, although a useful and efficient remedy, can be harsh in its operation and liable to oppressive use because it is summary in its effects. Consequently, its application has been confined within the limits set by statute. (at pages 5-6).

The issues involved with a prejudgment remedy order in this complex case involving parties and witnesses located outside of the jurisdiction in several different places, is particularly significant. This complexity relates to the constitutional argument raised, perhaps inartfully, by the undersigned. The basic point is that there are some cases

in which an effective hearing cannot be granted because of the nature of the case, the need for extensive preparation and discovery, and the absence of witnesses from the jurisdiction. It simply may not be possible to provide affidavits, documentary proof or deposition testimony sufficient to defeat an application for a prejudgment remedy, without all of the preparation which is needed for trial. Time does not permit such extensive preparation. In a complex case, then, a defendant may be deprived of the opportunity for an effective hearing at a meaningful time. Thus, we not only have a question as to the basic constitutionality of the statutory procedure, but we have a separate question as to the constitutionality of the application of the statutory procedure in a particular case. This point is argued in the original Brief.

While the plaintiff argues at length concerning the validity of a prejudgment attachment order, and the factual basis for it, such questions are really not on appeal. The only questions on appeal are whether the statute was validly applied in a manner consistent with due process in this case, under the facts and circumstances of this case, and whether or not the Court had jurisdiction to issue the Order which was issued. Difficult and substantial issues have been raised and jurisdiction should be exercised by this Court for the reasons set forth in the initial Brief.

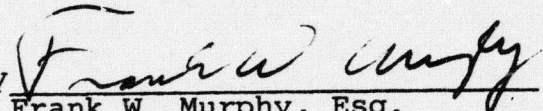
V. CONCLUSION:

For the following reasons, and those set forth in the original Brief, it is respectfully submitted that the Order of the District Court granting an attachment order concerning securities and assets located outside of the United States, and which have never been located within the United States, should be reversed and set aside.

Respectfully submitted,

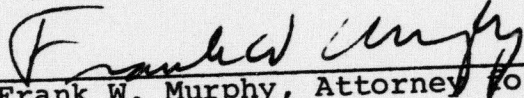
THE PLAINTIFF,

By


Frank W. Murphy, Esq.
Slavitt, Connery & Vardamis
618 West Avenue
Norwalk, Connecticut, 06852,
(203) 838-7555
His Attorney

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of this Brief and the Addendum has been made on opposing Counsel by mailing one (1) copy to Paul E. Knag, Cummings & Lockwood, One Atlantic Street, Stamford, Connecticut, by depositing a copy of the same in the United States Mail, postage prepaid as indicated above.


Frank W. Murphy, Attorney for the
Defendant-Appellant

Cyrus Hashemi
44 Arrowhead Way
Darien, Connecticut 06820

February 28, 1977

PARS INTERNATIONAL INVESTMENT COMPANY

Pars Building
129 Khorshid Avenue
Tehran,
Iran.

RE: Portfolio Mr. Cyrus Hashemi

Gentlemen,

Reference to my discussions with your President last August regarding certain legal proceedings in the State of Connecticut, please be advised you are hereby authorized to give the original certificates of all my bonds or stocks held with you to my attorney in fact, Mr R. Naini.

I understand that the securities are possibly kept outside the Country, in that case, please arrange for your correspondent in Europe to deliver them to me at Paris or Geneva. I have enjoyed my time with your organization and hope that at some near future I will have the opportunity to work with you again.

Please confirm by cable to me at my Paris address ,

54, Avenue de New York

PARIS - 75016

FRANCE

.../.

BEST COPY AVAILABLE

-2A-

Cyrus Hashemi
11 Arrowhead Way
Darien, Connecticut 06820

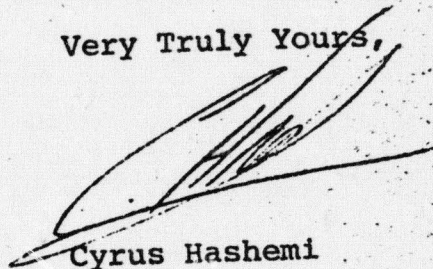
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PARS INTERNATIONAL INVESTMENT COMPANY

the arrangements you have made for the release of
my securities.

Your immediate attention is highly appreciated.

Very Truly Yours,

A handwritten signature in dark ink, appearing to be 'C. Hashemi', written over a horizontal line.

Cyrus Hashemi

PARIS F
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ZCZC OTC298 IRF245
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TEHERAN 68/67 7 0800

MR CYRUS HASHEMI
54 AVENUE NEWYORK PARIS-16

RYLET FEB 28 YOUR SECURITIES MOSTLY BOND
TOTL AVALUE DOLLARS 58000 STOP IMMEDIATE
LIQUIDATION RESULT LOSS STOP SUGGEST YOU ISSUE
REVOCABLE INSTRUCTION TO OUR COMPANY TO HOLD
YOUR SECURITIES IN FAVOUR THIRD PARTY OF YOUR
CHOISE STOP IF NOT APPROPRIATE CABLE US AND

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WE WIL TRANSFER EQUIVALENT AMOUNT SINCE
RELEASING ORIGINAL CERTIFICATE COULD TAKE ON MONTH STOP
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March 14, 1977

Hon. Jon O. Newman
United States District Judge
United States Courthouse
141 Church Street
New Haven, Connecticut

Re: Civil No. B-76-216
Inter-Regional Financial Group, Inc.
v. Cyrus Hashemi

Dear Judge Newman:

This will serve as a status report on my client's compliance with your prior order directing him to deposit securities with the Clerk of the Court. There has been some delay in forwarding the documentation to you, because of my client's business trip to Europe.

On February 28, 1977, he wrote to the company in Tehran which has his securities in its possession. Enclosed is a copy of his letter of February 28.

The company has responded to him by cable advising him that the securities consist primarily of bonds, with a total value of \$58,000. The company further advised by cable that liquidation could result in a loss, and it was suggested that irrevocable instructions be issued to hold the securities in favor of a third party, or if that was not appropriate, an equivalent amount could be transferred to Mr. Hashemi, since releasing the original certificates could take up to one month. I am enclosing a copy of the cable, and I have the original in my possession.

My client will be returning from his business trip to Europe later this week, and I will report to you further on his progress.

I have previously advised Mr. Knag of the above circumstances by telephone, and I am forwarding a copy of this letter to him.

Very truly yours,

SLAVITT, CONNERY & VARDAMIS

Frank W. Murphy.

FWM:da

Enc.

cc: Paul E. Knag, Esq.

-5A-

MR. CYRUS HASHEMI
41 ARROUHEAD WAY
DARIEN, CONNECTICUT 06820

April 5, 1977

PARS International Investment
PARS Building
129 Kuorshid Avenue
Tehran, IRAN

Re: Portfolio of Mr. Cyrus Hashemi

Gentlemen:

Further to my letter of February 28, 1977, and your cable responding to that, this is to request you to immediately arrange for delivery of all my securities held presently with you.

I would add that the receipt of the above documents within the period stated in your cable (thirty days) is essential.

If you feel that such delivery could not be handled within the thirty day period, I suggest that you liquidate and have the funds transferred to me.

Very truly yours,

A handwritten signature in dark ink, appearing to be 'C. Hashemi', with a long horizontal line extending to the right.

CYRUS HASHEMI

April 6, 1977

-6A-

Paul E. Knag, Esq.
Cummings & Lockwood
One Atlantic Street
Stamford, Connecticut 06905

Re: IFG v. Hashemi

Dear Paul:

The purpose of this letter is to bring you up to date on the status of Mr. Hashemi's compliance with the court order. I have previously sent you copies of the correspondence and cables to PARS International Investment in Tehran. As you will recall, on March 22 I talked with you about the third alternative suggested by PARS International Investment, and you, on behalf of your client, declined to accept that alternative. Consequently, it became necessary to arrange for delivery of the securities.

Thereupon, Mr. Hashemi contacted PARS International Investment in order to ascertain the exact documentation needed to transfer the securities from Iran to the United States. He is now in receipt of the correct documents, and on April 5, 1977, sent those documents with the necessary signatures, guaranteed by appropriate authorities, to PARS International Investment with instructions to immediately arrange for delivery of all the securities to him. In his letter, he further requested that in the event that the securities cannot be physically delivered within thirty days, PARS International Investment liquidate them and have the funds transferred to him. The latter alternative is the least desirable because it could very well result in depreciation in the value of the assets.

Finally, with regard to the proposed change in the bond, I would suggest that at the end of the first paragraph, in place of the portion deleted, the words "and this bond is substituted in lieu of attachment of personal property and bank accounts" be used.

If you agree with this alteration, I will redo the bond and arrange to have it signed by Mr. Hashemi and Aetna Casualty & Surety.

Very truly yours,

SLAVITT, CONNERY & VARDAMIS

Frank W. Murphy

FWM:da

1 C Y R U S H A S H E M I , called as a witness,
2
3 having been first duly sworn by the Clerk, testified
4 as follows:

5 THE CLERK: State your name and address.

6 THE WITNESS: Cyrus Hashemi, 44 Arrowhead
7 Way, Darien, Connecticut.

8 DIRECT EXAMINATION

9 BY MR. MURPHY:

10 Q Mr. Hashemi, do you own any publicly owned traded
11 marketable stocks or bonds?

12 A I do.

13 Q And can you give us an approximate value of those
14 stocks and bonds at market at the present time?

15 A I believe the approximate value is about 60 or 62
16 thousand dollars.

17 Q Are those bonds located in the -- stocks or bonds
18 located in the State of Connecticut?

19 A No, they are not.

20 Q Have they ever been located in the State of
21 Connecticut?

22 A No.

23 Q Are they located in the United States?

24 A No, they are not.

25 Q Have they ever since you have been the owner of any

1 of them been located in the United States?

2
3 A. No.

4 Q. Do you have them physically in your possession right
5 now?

6 A. No.

7 Q. Are they held in some type of management account?

8 A. They are.

9 Q. Do you have a present up-to-date accounting as to the
10 management status of that account?

11 A. I don't, but I could ask for one.

12 THE COURT: Are these securities available to
13 you on your demand?

14 THE WITNESS: They are in a management account,
15 your Honor, and that would mean that I would have to physically
16 demand their release to me and when I do, they release them.

17 THE COURT: All right. When you say physically
18 you don't mean in person, do you?

19 THE WITNESS: Yes, sir, your Honor.

20 THE COURT: They would honor your cabled
21 instructions?

22 THE WITNESS: No, your Honor, because my
23 signature is there and I have to sign there in person. It's a
24 management account. I can certainly have a power of attorney
25 drawn and get someone else to do. I can do that, too.

THE COURT: Is there someone at the location of these securities who you could authorize to do that?

THE WITNESS: Someone with the management company or --

THE COURT: In that city. I don't want to have you unnecessarily incur the expense of flying to wherever these are. Is there a law firm or some official who you could authorize?

THE WITNESS: It's very difficult to do that. I would have to send somebody from here or go myself, but I am prepared to do that.

Your Honor, may I also say that I have submitted to the Court of Appeals this proposal about three weeks ago to the effect that I was prepared to have these securities brought into the country and posted and I believe in that letter I also said that I was prepared to sign an affidavit to the effect that I did not -- I do not own more than this amount of publicly traded securities.

THE COURT: All right.

MR. MURPHY: Those are the basic questions, your Honor. I think he has testified that he does not in fact have \$312,500 of securities so he can't comply with the order to that extent. He can comply to the extent of \$60,000 approximately of publicly traded marketable securities, and we would merely

1 ask additional time from the Court in order to physically
2 transfer those securities here.

3 MR. KNAG: May I examine?

4 THE COURT: Yes.

5 CROSS-EXAMINATION

6 BY MR. KNAG:

7 Q Do you own any privately or untraded securities?

8 A Privately I do, yes.

9 Q What are those?

10 A I own an interest in a company in Iran. It's a
11 private company.

12 Q What is the name of that company?

13 A Iran Industries Corporation.

14 Q What is the value of those securities?

15 A It is not in the form of securities. It is like a
16 partnership. It's not represented by a share of a stock.

17 Q What's the name of the company?

18 A Iran Industries Corporation.

19 THE COURT: It's called Iran Industries
20 Incorporated?

21 THE WITNESS: No. Corporation, your Honor.

22 THE COURT: It's not a corporation?

23 THE WITNESS: Yes.

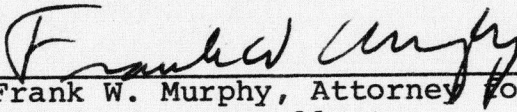
24 THE COURT: I thought you said it's a partner-
25 ship.

Balance of cross-examination omitted
(see Transcript, Pages 57-74)

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of this Brief and the Addendum has been made on opposing Counsel by mailing one (1) copy to Paul E. Knag, Cummings & Lockwood, One Atlantic Street, Stamford, Connecticut, by depositing a copy of the same in the United States Mail, postage prepaid as indicated above.



Frank W. Murphy, Attorney for the
Defendant-Appellant